

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

FRIDAY, THE 7TH SEPTEMBER 2007 / 16TH BHADRA 1929

Crl.Rev.Pet.No. 3189 of 2007()

**CRA.355/2005 of ADDL.DISTRICT AND SESSIONS JUDGE, ADHOC, FAST
TRACK-II, PATHANAMTHITTA**

**CC.199/2003 of CHIEF JUDICIAL MAGISTRATE COURT,
PATHANAMTHITTA**

REVN. PETITIONER: ACCUSED 2 TO 4/APPELLANTS

**1. SIJI, S/O.JOSEPH @ RAJU,
ALUNKAL VEEDU, KOCHZHUTHUMALA,
VENNIKULAM MURI, PURAMATTAM VILLAGE.**

**2. JOSEPH @ RAJU,
ALUNKAL VEEDU,KOCHZHUTHUMALA,
VENNIKULAM MURI, PURAMATTAM VILLAGE.**

**3. ALEYAMMA, W/O.JOSEPH @ RAJU,
ALUNKAL VEEDU, KOCHZHUTHUMALA,
VENNIKULAM MURI, PURAMATTAM VILLAGE.**

**BY ADV. SRI.NAGARAJ NARAYANAN
SRI.SAIJO HASSAN
SRI.A.S.SABU**

RESPONDENTS: COMPLAINANT/STATE

**STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.**

BY PUBLIC PROSECUTOR SRI.K.S.SIVAKUMAR

**THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION
ON 07/09/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

V. RAMKUMAR, J.

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Cri. R.P. No. 3189 OF 2007
.....

Dated this the 7th day of September, 2007

O R D E R

The revision petitioners, who are accused Nos.2 to 4 in C.C.No.199/2003 on the file of the CJM, Pathanamthitta for offences punishable under sections 452 and 323 read with section 34 IPC, challenge the conviction entered and the sentence passed against them concurrently by the courts below for the aforementioned offences.

2. The case of the prosecution can be summarised as follows:-

On 26.7.2003 at about 9 p.m. the four accused persons criminally trespassed into the house belonging to PW3 where PWs 1 to 4 are residing together and from the dining room of the house A1 beat PW1 on the right side of his head and A3 voluntarily caused hurt to PW2 by beating on his left cheek and A4 voluntarily caused hurt to PW3 by beating on her left cheek and the accused thereby committed the aforementioned offences.

3. On the side of the prosecution, 8 witnesses were examined as PWs 1 to 8 and 6 documents were got marked as

Exts.P1 to P6 and two material objects were got marked as MOs 1 and 2.

4. After the close of the prosecution evidence, accused Nos.2 to 4 (revision petitioners) were questioned under section 313(1)(b) Cr.P.C. with regard to the incriminating circumstances appearing against them in the evidence for the prosecution. They denied those circumstances and maintained their innocence. They did not adduce any defence evidence when called upon to do so.

5. The learned CJM after trial, as per judgment dated 27.10.2005 found the revision petitioners guilty of the offences charged and sentenced them each to undergo simple imprisonment for three months and to pay a fine of Rs.3,000/- (Rupees three thousand only) and on default to pay the fine, to suffer simple imprisonment for one month under section 452 IPC and to undergo simple imprisonment for one month under section 323 read with section 34 IPC. The revision petitioners preferred an appeal as Criminal Appeal No.355/2005 on the file of the Additional Sessions Court (Adhoc) Fast Track-II, Pathanamthitta. The lower appellate court dismissed the appeal confirming the

conviction entered and the sentence passed as per judgment dated 21.5.07. Hence, this revision.

6. The 1st accused, who was absconding, did not face the trial and the case has been re-filed. The persons who stood trial are the revision petitioners who are accused Nos. 2 to 4.

7. Eventhough the learned counsel for the revision petitioners assailed the conviction recorded against them on various grounds including apparent contradictions and omissions in the testimony of PWs 1 to 5, the said conviction cannot be dislodged by this court, sitting in the rarefied revisional jurisdiction in the absence of any infirmity in the appreciation of evidence by both the courts below. Exaggerations, contradictions, omissions and embellishments are bound to be there in the testimony of even the most truthful witnesses. This is because the power of observation, retention and recapitulation varies from individual to individual and there cannot be any cut and dried formula for a person witnessing an occurrence. The facts and circumstances of the case show that the occurrence took place at 9 p.m. inside the dining hall of the house belonging to PW3. Hence, the inmates of the house will be the most natural witnesses to prove the

occurrence. Exts.P3 and P4 wound certificates show that both PWs 1 and 3 had sustained injuries in the occurrence. The conviction recorded by the courts below after a careful evaluation of the oral and documentary evidence cannot be interfered with by this court, sitting in the rarefied revisional jurisdiction and the same is accordingly confirmed.

8. What now survives for consideration is the question of adequacy or otherwise of the sentence imposed on the revision petitioners. The occurrence was the result of one Kunhamma having been abused through the telephone. A1 allegedly spread a rumour to the effect that PW4 who is the son of PW3 and the husband of the defacto complainant was the person who had abused Kunhamma. Infuriated by this, PW4 had gone to the house of A1 and questioned him and the occurrence was allegedly a retaliation of the same. The parties are neighbours. Having regard to the entire facts and circumstances of the case, I do not think that the revision petitioners who are members of an entire family deserve penal servitude by way of incarceration and that interests of justice will be adequately met by imposing an appropriate fine and directing payment of compensation to the

injured. Accordingly, the sentence imposed on the revision petitioner is set aside and for the conviction under section 452 IPC each of them is sentenced to pay a fine of Rs.5,000/- (Rupees five thousand only) and on default to pay the fine, to suffer simple imprisonment for one month. For the conviction under section 323 IPC, each of the petitioners is sentenced to pay a fine of Rs.1,000/- (Rupees one thousand only) and on default to pay the fine, to suffer simple imprisonment for 20 days. The fine amount shall be paid within 45 days. From out of the fine amount, a sum of Rs.3,000/- (Rupees three thousand only) shall be paid to PWs 1 and 3 each by way of compensation under section 357(3) Cr.P.C.

In the result, this revision is disposed of confirming the conviction entered and modifying the sentence as above.

(V. RAMKUMAR, JUDGE)

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